REMARKS

Claims 1-18, 28, and 29 are pending in the application. Claims 1, 2, 8-11, 14-18, 28, and 29 are withdrawn as being drawn to non-elected inventions. Claims 1 and 2 have been canceled herein. Applicants reserve the right to prosecute the non-elected claims in subsequent divisional applications. Claims 3-7, 12, and 13 are currently being examined on the merits. Claims 3, 4, 5, 9, and 12 have been amended herein, to remove dependence upon non-elected claims as requested by the Examiner or to further clarify the intended subject matter of the claimed invention. No new matter is added by these amendments. Entry of these amendments is respectfully requested.

The Examiner is also respectfully reminded that, upon allowance of the polynucleotide claims, claims 9-10, 14-16, 28, and 29, directed to processes for using same, must be rejoined. See the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products.

See also M.P.E.P. 821.04 as follows.

> Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. . . The claims to the nonelected invention will be withdrawn from further consideration under 37 C.F.R. 1.142. . . . However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Claim Objections:

Claims 3-6 are objected to as being dependent on non-elected claims. As amended herein, claims 3-6 no longer depend on non-elected claims 1 and 2. Withdrawal of the objections to claims 3-6 is respectfully requested.

Rejections under 35 U.S.C. § 112, second paragraph:

Claims 12-13 are rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. In particular, the Office Action asserts that the word "complementary" is unclear, as it is allegedly uncertain whether the claimed polynucleotides are fully or partially complementary to the recited sequences. In order to further clarify that the complementary sequences recited in claim 12 are the complements of the full sequences of SEQ ID NO:2 or variants thereof, claim 12 has been amended herein to recite polynucleotides that are "fully complementary to the entire length of" the polynucleotides of 12(a) and 12(b). Applicants note that this amendment is made solely in order to further clarify the subject matter covered by the claim, and does not further limit the claim in any way.

The Office Action further asserts that it is not clear what is meant by an "RNA equivalent." It is well known in the art that an "RNA equivalent," in reference to a DNA molecule, is composed of the same linear sequence of nucleotides as the reference DNA molecule with the exception that all occurrences of the nitrogenous base thymine are replaced with uracil, and the sugar backbone is composed of ribose instead of deoxyribose. This concept is implicit in the specification in, for example, the sections which describe the design of DNA or RNA antisense molecules (page 27, lines 28-30; page 33, lines 23-25) or hybridization probes (page 34, lines 8-10).

For at least the above reasons, withdrawal of the rejections under 35 U.S.C. § 112, second paragraph is respectfully requested.

Rejections under 35 U.S.C. § 102:

Claims 12-13 are rejected under 35 U.S.C. § 102 as allegedly being anticipated by Product Number 1028 of Biolabs Catalog. The Biolabs product is an 8 nucleotide sequence that is complementary to the region of SEQ ID NO:2 from nucleotides 30-23.

Applicants first note that the reference sequence consists of only a portion of SEQ ID NO:2 or its complement, and thus does not anticipate claim 12 or claim 13. In order to further clarify that the complementary sequences recited in claim 12 are the complements of the full sequences of SEQ ID NO:2 or variants thereof, claim 12 has been amended herein to recite polynucleotides that are "fully complementary to the entire length of" the polynucleotides of 12(a) and 12(b). Applicants note that this

amendment is made solely in order to further clarify the subject matter covered by the claim, and does not further limit the claim in any way. The Biolabs Catalog does not describe polynucleotides that are fully complementary over the entire length of the recited sequences. Therefore, withdrawal of the rejection under 35 U.S.C. § 102 is respectfully requested.

CONCLUSION

In light of the above amendments and remarks, Applicants submit that the present application is fully in condition for allowance, and request that the Examiner withdraw the outstanding rejections. Early notice to that effect is earnestly solicited.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact Applicants' Attorney at (650) 855-0555.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108.**

Respectfully submitted,

INCYTE CORPORATION

Date: April 18, 2003

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claims 1 and 2 have been canceled.

Claims 3, 4, 5, 9, and 12 have been amended as follows:

3. (Once Amended.) An isolated polynucleotide encoding a polypeptide [of claim 1] comprising an amino acid sequence selected from the group consisting of:

a) a polypeptide comprising the amino acid sequence of SEQ ID NO:1,

b) a naturally occurring polypeptide comprising an amino acid sequence at least 90% identical to the amino acid sequence of SEQ ID NO:1,

c) a biologically active fragment of a polypeptide having the amino acid sequence of SEQ ID NO:1, and

d) an immunogenic fragment of a polypeptide having the amino acid sequence of SEQ ID NO:1.

4. (Once Amended.) An isolated polynucleotide of claim 3 encoding a polypeptide [of claim 2] having the sequence of SEQ ID NO:1.

5. (Once Amended.) An isolated polynucleotide of claim 4, having [a] the sequence of SEQ ID NO:2.

9. (Once Amended.) A method for producing a polypeptide [of claim 1] comprising an amino acid sequence selected from the group consisting of:

a) a polypeptide comprising the amino acid sequence of SEQ ID NO:1,

b) a naturally occurring polypeptide comprising the amino acid sequence at least 90% identical to the amino acid sequence of SEQ ID NO:1,

c) a biologically active fragment of a polypeptide having the amino acid sequence of SEQ ID NO:1, and

d) an immunogenic fragment of a polypeptide having the amino acid sequence of SEQ ID NO:1, the method comprising:

[a)] i) culturing a cell under conditions suitable for expression of the polypeptide, wherein said cell is transformed with a recombinant polynucleotide, and said recombinant polynucleotide comprises a promoter sequence operably linked to a polynucleotide encoding said [the] polypeptide [of claim 1], and

[b)] ii) recovering the polypeptide so expressed.

12. (Once Amended.) An isolated polynucleotide comprising a sequence selected from the group consisting of:

a) a polynucleotide comprising [a] the polynucleotide sequence of SEQ ID NO:2,

b) a naturally occurring polynucleotide comprising a polynucleotide sequence at least 90% identical to [a] the polynucleotide sequence of SEQ ID NO:2,

c) a polynucleotide having a sequence fully complementary to the entire length of a polynucleotide of a),

d) a polynucleotide having a sequence fully complementary to the entire length of a polynucleotide of b) and

e) an RNA equivalent of a)-d).